

INCLUSIONARY HOUSING

Affordable Housing Requirement

Updated 7/5/10

This document contains an overview of the requirements, processes and timelines for meeting Inclusionary Housing requirements. The Inclusionary Housing Ordinance may be found in Chapter 9-13 of the Boulder Revised Code, 1981.

Additional detailed information and all documents referenced are available on-line at www.boulderaffordablehomes.com or by calling the city of Boulder Housing Division at 303-441-3157.

Which projects are subject to Inclusionary Housing?

All projects with residential dwelling units are subject to the requirements of Inclusionary Housing.

General Inclusionary Housing requirement

Inclusionary Housing requires that new residential development contribute at least 20% of the total units as permanently affordable housing. Options for meeting this requirement include on-site permanently affordable units, dedicating off-site existing units as permanently affordable, dedicating vacant land for affordable unit development or a cash-in-lieu payment. For-sale projects should provide at least half of the required permanently affordable units on-site.

What does “permanently affordable” mean?

Permanently affordable means a given unit has an ongoing resale restriction that is designed to keep the unit affordable, in perpetuity, to lower income households. The exact terms of the resale restriction are contained in a covenant which is recorded against each property. Permanently affordable units must also be occupied by income eligible households.

How are prices for permanently affordable for-sale units determined?

Affordability and income eligibility for home buyers are defined in terms of the Area Median Income (AMI). Maximum allowable sales prices for the affordable housing units are calculated on a quarterly basis to take into account interest rate changes. See the Inclusionary Housing Pricing Chart and Sales Price Calculation Methodology documents available on the Housing web site. Please note that these are the maximum allowable sales prices, not a guaranteed minimum price. Depending upon the market and desirability of a given permanently affordable unit, prices may need to be adjusted downward in order to successfully complete a sale.

Rental Projects

The city is prohibited by state statute from controlling the rents in private sector rental projects. A private sector developer of a rental project may fulfill the Inclusionary Housing requirement with any of the off-site options discussed below. Additionally, the required affordable units may be provided on-site if the developer forms a lawful non-

profit corporation, similar to a Housing Authority, the primary purpose of which is to provide affordable housing.

What About Small Projects?

Projects with four or less units may choose to provide one on- or off-site permanently affordable unit, dedicate land or pay a cash-in-lieu contribution.

What if I Only Own One Lot?

In addition to the cash-in-lieu option outlined above, there are three additional alternatives for single lot owners. Details may be found in the Inclusionary Housing Ordinance.

- 1) An owner of a single lot may have their Inclusionary Housing obligation waived one time if certain conditions are met.
- 2) The newly constructed unit could be dedicated as permanently affordable with subsequent owners meeting the requirements of that permanent affordability.
- 3) The single lot owner could defer payment of the calculated, adjusted cash-in-lieu contribution until the subsequent transfer of the property.

PROCESS & TIMELINES

Each item in this table is explained in detail below.

Form or Action	By-right projects 1-4 housing units	By-right projects 5 or more housing units	Projects requiring land use approval
Preliminary Determination of Inclusionary Housing Compliance	not applicable	not applicable	Submit with land use application
Determination of Inclusionary Housing Compliance Form (DOC) Aka: the “Affordable Housing Agreement”	Prior to building permit submittal** Not applicable for development of one single family home making a CIL contribution	Prior to building permit submittal**	Prior to approval of the development agreement**
Amendment to the Determination of Inclusionary Housing Compliance Agreement*	Prior to building permit issuance** Not applicable for development of one single family home making a CIL contribution	Prior to building permit issuance	Prior to building permit issuance
Restrictive Covenants; recorded with the County Clerk	Not applicable	After the DOC is signed, prior to building permit issuance	After the DOC is signed, prior to building permit issuance
Cash-in-lieu Payment; added to the building permit amounts due upon issuance	At building permit issuance	At building permit issuance	At building permit issuance
Request for Alternative Methods of Compliance*	Submitted and approved or denied prior to signing the DOC and prior to building permit issuance	Submitted and approved or denied prior to signing the DOC and prior to building permit submittal	Submitted and approved or denied prior to signing the DOC and prior to development agreement approval

*not required; submitted on an as needed basis.

**to avoid delays, it is recommended that the developer meet with a housing planner as soon as possible before submitting for a building permit. It typically takes 2 -4 wks to finalize all required documents.

By Right Development

By right development means that a project is not subject to any land use review approval.

By-right projects proposing four or less total housing units generally make a cash-in-lieu contribution to meet their inclusionary requirements. If a standard cash-in-lieu contribution is made for development of only one single home a Determination of

Inclusionary Housing Compliance form is not required. For development of more than one unit or if any of the other options for meeting the requirement are utilized, a Determination of Inclusionary Housing Compliance form must be filled out and signed by both the developer and a Housing Planner prior to issuance of a building permit.

By-right projects proposing five or more total housing units are required to provide on-site affordable housing units. Developers of these projects should meet with a housing planner as soon as possible after submitting for a Residential Growth Management (RGMS) allocation and must follow the steps for on-site permanently affordable units outlined below under the heading “On-site Permanently Affordable Units”.

Development that Requires Land Use Approval

A developer whose project is subject to land use review needs to commit to the method for meeting the requirements of inclusionary housing before any land use approval can be granted.

On-site Permanently Affordable Units

Both by right projects and those subject to land use approval with five or more housing units must provide on-site affordable housing units. To meet this requirement the first steps are:

1. Projects subject to land use review must fill out a Preliminary Determination of Inclusionary Housing Compliance form and include this with the Land Use Review Application.
2. Review the Livability Guidelines
3. Read the Pre-purchase Upgrades Policy
4. Read the Marketing Summary

Developers meet with a housing planner to discuss how they will meet their Inclusionary Housing requirements.

City of Boulder Housing Planners:

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Postal mail: Division of Housing
City of Boulder
P.O. Box 791
Boulder, CO 80306

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In order to review the proposed permanently affordable units, the housing planner will need the following:

- a) Scaled site plans, approved by the City, including floor plans and elevation adequate to evaluate the fixtures, finish, and cabinetry of the proposed affordable units.

- b) Spec sheets for all fixtures, appliances, counter tops and flooring for both market rate and permanently affordable units.
- c) An excel spreadsheet that lists for all units (affordable and market) proposed:
 - 1. Address and unit number (that corresponds to site plan location)
 - 2. Unit type (single family, townhouse, condo)
 - 3. Finished square feet
 - 4. Garage square feet
 - 5. Unfinished square feet (if any)
 - 6. Number of bedrooms
 - 7. Number of bathrooms
 - 8. Number of parking spaces or garages per unit and location
 - 9. If a unit is accessible and what type of accessibility
 - 10. Total number of attached and or detached units in the project
 - 11. Total square footage of all attached and or detached units in the project

Staff Review of Proposed Permanently Affordable Units

This process will take a minimum of two to four weeks depending on the size and complexity of the project. A housing planner will confirm appropriate size, location and preliminary conformance to the Livability Guidelines for any on or off site affordable units. The affordable units should be proportional in type, number of bedrooms/baths and location to the market rate units. An initial maximum allowable sales price will be set for the units and, if applicable, the amount of cash-in-lieu due calculated. The final maximum allowable sales price will be determined based on the pricing sheet in place when the affordable covenant(s) are signed. If there are any deficiencies in meeting the minimum requirements of the Livability Guidelines such as insufficient storage area, the developer will be asked to correct the deficiencies. If the deficiencies can not be corrected the maximum allowable sales price may be reduced to account for the deficiency or the developer may be required to make a cash payment to account for the deficiency.

Determination of Inclusionary Housing Compliance

A Determination of Inclusionary Housing Compliance Agreement will be filled out by the housing planner and signed by the developer to document the plan for meeting the Inclusionary Housing requirements. For projects requiring a land use agreement, this form will be signed prior to any Development Agreement approval. For by-right projects with on-site units, this form should be signed two to four weeks prior to building permit issuance to allow time for the restrictive covenants to be drawn up prior to building permit issuance.

The applicant may request to amend the agreement no later than the date of building permit issuance by submitting an Amendment to the Determination of Inclusionary Housing Compliance Agreement. The amendment will be reviewed and approved or denied by the Housing Division Manager.

The following items are needed to draft the restrictive covenants and are submitted to the housing planner along with the Determination of Inclusionary Housing Compliance Agreement.

Permanently Affordable Restrictive Covenants

In order to keep the proposed units permanently affordable, a restrictive covenant must be signed and recorded for each affordable unit prior to application for a building permit.

In order to draft the covenant, the housing planner needs the following information:

- 1) Pre-construction upgrades to be offered for the permanently affordable units, if any.
- 2) Title commitment or attorney's memorandum current to within 30 days.
- 3) Current legal description and addresses for each permanently affordable unit. (Or, if the owner has not yet filed a declaration of condominium a current legal description for the underlying parcel.)
- 4) Property owners and titles for those authorized to sign the covenants. For limited liability corporations, please provide a notarized Statement of Authority that identifies the property owner and the titles or positions for those authorized to sign on the corporation's behalf.
- 5) Affordable Housing Livability Guidelines Checklist for each proposed affordable unit filled out and signed.
- 6) Contact information for the person responsible for marketing the permanently affordable units.

A permanently affordable covenant is a legal obligation in the form of a deed restriction that runs with the land and is enforceable on subsequent buyers of the property. The sales price of the affordable unit is determined based on the pricing sheet in place when the covenant is signed. This price sheet will be adjusted if there are subsequent changes that affect sales price. The covenant is drawn up by the housing planner, signed and notarized by the developer, and recorded by the city at the county assessor's office. The restrictive covenant becomes part of the public record for the property. Covenants insure that the home will be affordable to future generations and the value and effectiveness of the public's investment in these homes will be maintained in perpetuity.

The city of Boulder uses two basic types of covenants to insure permanent affordability of homes. An Interim Covenant and a Permanently Affordable Covenant:

An **Interim Covenant** is used to secure the owner/developers commitment of units prior to a declaration of condominium. At this point in the development process individual units do not yet have separate legal descriptions so the covenant encumbers the entire parcel which includes all units being built regardless of affordability. It specifies:

- Which units will be deed restricted as permanently affordable;
- the number of bedrooms, bath rooms, square footage;
- the initial maximum allowable sales price of the units.

The interim covenant also commits the owner to follow:

- The City's fair marketing procedures;

- buyer selection process;
- notification and other program requirements.

The interim covenant specifies that the owner will sign a new Permanently Affordable Covenant for each affordable unit when the declaration of condominium is finalized.

The **Permanently Affordable Covenant** is specific to each affordable unit and replaces the interim covenant legally encumbering only the affordable unit in question. This document is signed by the property owner/developer when the declaration of condominium is finalized. A new covenant is not required at the initial sale of the property but is required for subsequent sales.

The permanently affordable covenant commits the owner and all subsequent buyers to:

- Sell to an income-eligible purchaser;
- follow the City's fair marketing procedures;
- grant the city a first option to buy the property;
- limited appreciation which allows the city to set the resale price of the home;
- follow the capital improvement credit policy;
- agreements about excessive damage and home maintenance;
- rental restrictions;
- owner occupancy requirements.

Pricing of the Permanently Affordable Units

The following methodology is used to determine the maximum allowable sales price for new affordable homes in Boulder. Resale prices for affordable homes are calculated on an individual basis and include at least the allowed amount of appreciation, approved credit for capital improvement, and allowed amount of costs of sale.

1. The maximum Inclusionary Housing sales price is based on a household earning the HUD low income limit. The income limit for households purchasing Inclusionary Housing (IH) units is based on the US Department of Housing and Urban Development (HUD) determination of low income limit plus 10% for Boulder County. This "window" between the income used to price affordable homes and the income allowed to purchase an affordable home increases the range of households financially able to purchase the homes.
2. The maximum sales price is calculated based on principal, interest, taxes, insurance, and homeowner's association dues that do not exceed 28% of gross monthly household income. Taxes and insurance are assumed to be 18% of the affordable housing payment.
3. The maximum sales price is based on a 30-year fixed-rate mortgage at prevailing local interest rates. A 5% down payment is assumed.
4. Estimates of homeowner association dues are based on an annual survey of local HOAs.
5. Maximum sales prices are set assuming a set number of people per bedroom. The actual number of persons in a household can vary.
6. The bold sales price on the Inclusionary Housing pricing sheet is the base price for a unit with a set number of bedrooms and bathrooms per the HUD limits stated above and

is the price required per the inclusionary housing ordinance. Adjustments to that price are made for variations in unit size and number of bathrooms.

The prices charged for permanently affordable ownership dwelling units in any one project may be averaged such that no single permanently affordable unit exceeds a price that is affordable to a household earning ten (10) percent more than the HUD Low Income Limit for the City of Boulder.

Prices for permanently affordable ownership dwelling units are finalized when a covenant is signed for the affordable unit.

Permanently Affordable Unit Minimum Sizes

The average size of permanently affordable attached units must equal 80% of the average size of the market units. The average size of permanently affordable detached units must equal 48% of the average size of the market units. The city may require affordable units up to a maximum average of 1,200 square feet.

Distribution of Affordable Units

The on-site affordable housing units shall be provided in proportional numbers by type, and size, to the market rate units with-in each project and should be distributed throughout the project to achieve integration and avoid concentration or segregation of the affordable households.

Demolished Dwelling Units

For a redevelopment that replaces demolished dwelling units with redeveloped or newly constructed dwelling units:

- For projects where either the number of demolished dwelling units OR the number of newly constructed dwelling units equals five or more, Inclusionary Housing applies to all new dwelling units in the development.
- For projects where the total number of demolished units is four or less, and a total number of redeveloped or newly constructed dwelling units is four or less, Inclusionary Housing applies to all new dwelling units in the development except when a building permit has been applied for within one year of the date the demolition permit was issued. If the one year requirement is met, Inclusionary Housing applies only to the net increase in new dwelling units.

Marketing of the Permanently Affordable Units

Once the restrictive covenant has been signed and recorded, a developer may begin marketing the permanently affordable unit. A Homeownership staff person from the city will contact the person responsible for marketing the permanently affordable units in order to start the process. The developer should review the Marketing Procedures for more specifics regarding the marketing of permanently affordable units.

Inspection of Permanently Affordable Units

Prior to scheduling a final inspection, the affordable units will be inspected to verify final conformance with agreed upon standards and the Livability Guidelines. If deficiencies are identified, they must either be corrected or a monetary equivalency will be determined by city staff and deducted from the maximum allowable sale price in the

covenant or assessed as a direct amount due to the Housing Division. If the unit has been pre-sold, the price will be reduced at closing. Copies of warranties for all appliances and flooring will also be required prior to scheduling a final inspection.

Alternative Methods of Compliance

An alternative method of compliance to the general inclusionary requirements may be applied for which may or may not be granted at the discretion of the city manager. Alternative Methods of Compliance should be approved or denied prior to signing the Determination of Inclusionary Housing Compliance form. Either the applicant or the city Housing Division may initiate the alternative methods of compliance procedure.

Off Site Options

Up to half of the permanently affordable unit requirement may be met with the off-site options of acquisition and dedication of existing or newly constructed housing units, cash-in-lieu contribution, or land dedication.

Acquisition and Dedication of Existing or Newly Constructed Housing Units

Acceptance of any off-site unit shall be at the sole discretion of the city based on individual property characteristics. In addition to the Determination of Inclusionary Housing Compliance form the developer must enter into and sign a Provision of Off-site Permanently Affordable Unit Agreement that includes as determined by the city manager, requirements such that the off-site affordable unit will be acceptable to the city. Such requirements may include but are not limited to the following:

1. Size of the unit;
2. Number of bedrooms and bathrooms;
3. A reasonably standard layout;
4. Maximum allowable homeowners association dues;
5. General location requirements of the affordable unit;
6. Condition of structural, electrical, plumbing, mechanical and other home elements;
7. Improvements required by either the seller or Developer providing the off-site units;
8. Allocation of costs of the sale;
9. The process and requirements for identifying the unit, city approval, marketing and sale; and
10. Maximum allowable sales price.

To assist in determining whether proposed existing unit(s) are of an equivalent value, quality, and size to those which would have been constructed on-site, the developer or property owner shall, at his or her own expense, hire an inspector to inspect each proposed unit and determine whether the proposed unit meets current housing and building codes, and estimate the life cycle replacement timing and costs of the principal building structures and interior fixtures. These estimates or identified deficiencies will be considered regarding the acceptability of the proposed unit(s) and the allowable sale price or rent if the units are accepted by the city manager. At a minimum, any proposed unit which fails to meet current housing and building codes must be brought into compliance

at the developer's expense before that unit may be considered as fulfilling an inclusionary housing requirement. The city manager may require that the unit be improved at the developer's expense to meet the Livability Standards.

If the proposed unit(s) is acceptable to the city, the developer or property owner shall sign and record a restrictive covenant.

When off-site units are allowed to be provided in developments with more than 20% affordable owners, additional requirements may be included in the Off-site Permanently Affordable Unit Agreement as determined by the city manager.

Cash-in-lieu Contribution

Developers may satisfy permanently affordable housing requirements by making cash contributions to the city's affordable housing fund. The cash-in-lieu contribution is calculated on the total number of dwelling units in the development. For development projects whose dwelling units average 1,200 square feet or greater, the cash-in-lieu contribution is based on the required per unit amount in effect at the time of building permit issuance. For development projects whose dwelling units average less than 1,200 square feet, the cash-in-lieu contribution will generally be a lesser amount per unit, based on a square foot multiplier multiplied by twenty percent of the total floor area of all unrestricted dwelling units.

Applicable cash-in-lieu amounts must be paid prior to receipt of a building permit. Cash-in-lieu amounts are adjusted annually on July 1 based on either a set increase or the affordability gap. See the Inclusionary Housing ordinance for more information.

Land Dedication

The inclusionary housing requirement may be satisfied by the dedication of land to the City of Boulder or an entity designated by the City of Boulder for permanently affordable dwelling units. The land dedication requirement may be satisfied in either of two ways:

1. Land that Meets Requirements: Through dedication of land that meets all of the following requirements:

- (A) The land dedication and location of site has been approved by the city manager;
- (B) The dedicated land is located in the city of Boulder and has a residential zoning classification;
- (C) The land allows for the provision of affordable units of equivalent type (single-family, multi-family, town home, etc), floor area, and number of bedrooms to that which would have been provided on-site;
- (D) The land is certified free of toxic substances and contaminated soils;
- (E) Any portion of the land that is within the 100 year floodplain shall not be included toward the satisfaction of this provision unless, prior to dedication, it is demonstrated that the land in the floodplain is capable for use for residential development;
- (F) The land is free of all liens and encumbrances and all property taxes and special taxes shall be current before the title for the dedicated land is conveyed. The land shall be

conveyed by general warranty deed before issuance of a building permit for the originating residential development; and

(G) The total units possible on the land dedicated shall be two and one half times the number of units required by the inclusionary housing requirement above for the originating residential development and shall be determined based on the following:

- i. The mix of inclusionary housing dwelling unit sizes, types and number of bedrooms that would have been provided on-site of the originating residential development.
- ii. Densities permitted by applicable planning and zoning designations, area plans, connections plans, required open space, automobile parking, right of ways, site, infrastructure, and other planning constraints.
- iii. Environmental, floodplain, steepness of the site and other physical constraints.

2. Land of Equivalent Value: Through dedication of land that has an equivalent or greater value to the cash-in-lieu contribution amount, including any in-lieu requirements of subsection 9-13-3 (d), B.R.C. 1981 for providing less than one half of the required affordable dwelling units on-site that would have been required of the originating residential development. The value of land to be dedicated shall be determined, at the cost of the developer, by an independent appraiser, who shall be selected from a list of certified appraisers provided by the city, or by such alternative means of valuation to which a developer and the city may agree. An applicant may use cash to make up any gap between the value of the donated land and the cash-in-lieu contribution amount.